

Violating ethics

Violating ethics: unlawful combatants, national security and health professionals

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Violations of ethical conduct

This article is about torture, power and the breach of ethical conduct among military doctors, nurses and medics in the "War on Terror". Violations of ethical conduct have been widely recounted in academic and non-academic journals and reports.¹ This paper is also a call to international boards of doctors and nurses to intervene directly to stop abuses undertaken by US military healthcare providers under the guise of the War on Terror. With evidence growing that US military and security services are actively engaged in the ill treatment, torture and deaths of suspects, details about the participation of healthcare professionals (especially nurses) in such unlawful and unethical activities remain for the most part timidly accounted for. But according to current literature on this topic, there is increasing evidence that US doctors, nurses and medics have been complicit in torture and other unethical activities in Afghanistan, Iraq and Guantanamo Bay (Camp Delta).²⁻⁴

The US government has inadequately dealt with these facts. Senior officials in the Bush administration who have played a major part in conducting the War on Terror have been either promoted or asked to remain in their posts. More seriously, despite worldwide condemnation of the reality behind the photos, allegations of torture continue at Guantanamo Bay, Cuba.⁵ The graphic and appalling nature of several photographs (taken at Abu Ghraib and broadcasted worldwide) are by no means the only evidence of abuses conducted by the US on its own territory and abroad. But the complicity of healthcare professionals in many venues (whether as witnesses or participants), such as in capital punishment procedures in the US, exacerbates the already disturbing extent of biopolitical abuses by the US government.

Doctors and nurses often top the polls as caring and trustworthy professionals.⁶ Indeed, so strong is the current of sentimentalism that surrounds both groups of professionals that, whenever

the media run a story on medicine and nursing, these professions are described in angelic terms.⁶ But medical activists in well-regarded scientific journals, such as this one, regularly challenge this social construction. For the most part, nursing as a profession has failed to deal with issues pertaining to state-sponsored unethical practices. When the criticisms by human rights groups of the participation of nursing professionals in administering lethal injection, for instance, were examined by Federman and Holmes,⁷ they elicited extremely emotive reactions, especially in the US (Sandelowsky⁸). Following up on previous work,⁶⁻⁹ this short paper is an attempt to raise awareness about the role of military doctors and nurses at Camp Delta (Guantanamo Bay, Cuba) where in complete violation of existing international laws, detainees are housed in horrendous conditions.²

The genesis of abuses

After 9/11, the US Congress introduced many measures, laws and resolutions dealing with the capture and care of enemy combatants. In particular, Congress granted the president the authority to use all necessary and appropriate force against those nations, organisations or those persons whom he determined were responsible for the 9/11 attacks. On 13 November 2001, the president issued a military order granting the secretary of defense the power to detain anyone whom the president determined was a member of Al Qaeda or who had engaged in international terrorism. Importantly, there was no affirmative right to trial granted to detainees.¹⁰ Combined with this broad grant of executive authority, the government created military tribunals, which have minimal due process protections compared with US civilian courts. In December 2005, Congress passed the Detainee Treatment Act, which prevents all alien detainees held at Guantanamo Bay, Cuba, from petitioning US federal courts for writs of habeas corpus. In effect, according to Yale law professor Judith Resnik, detainees have

almost no chance of being heard in a civilian court. Their only chance, she writes, is to "go to only the DC Circuit Court of Appeals, which has the discretion to refuse to hear them. In short, the amendment is aimed at limiting detainees' access to courts."¹¹

The official position of the US government is that these detainees are not prisoners of war. Rather, they are unlawful combatants and, consequently, are not subject to the rules and regulations governing wartime, such as found in the Geneva Conventions. This distinction is legally suspect,¹²⁻¹³ but it is the basis on which the Bush administration has justified (or tolerated) torture. Notably, the Bush administration issued the infamous torture memo, drafted by a Department of Justice lawyer and signed by Assistant Attorney General Jay Bybee. The Bybee memo, as it is sometimes known, argues that torture is torture only when it is specifically intended to cause harm. The memo also narrowly defines torture as bodily damage that results in death, organ failure or the permanent impairment of a bodily function, thereby excluding from this definition psychological torture and torture that does not rupture an organ or result in death.

We agree with Glittenberg¹⁴ that torture is the tool of barbaric and aggressive political regimes; unfortunately, it is currently practised both secretly and overtly by more than two thirds of the world's nations as a means of political control, as well as during wars.¹⁵ Torture is an extreme form of trauma that strategically attacks the body, psyche and spirit of the prisoner to destroy all levels of meaning. The United Nations¹⁶ defines torture as the "deliberate, systematic or wanton infliction of physical or mental suffering by one or more persons acting alone or on the orders of an authority, to force another person to yield information, to make a confession, or any other reason", a definition that differs markedly from that in the Bybee memo.

Torture comprises two components, infliction of pain (or ill treatment) and interrogation, which always occur simultaneously, in part, because the tortured and the torturer experience them as opposite¹⁶; the primary objective is to cause pain severe enough to break the victim, not to kill him or her. Consequently, doctors and nurses must be involved one way or another, whether by participating in direct torture or in caring for the resultant wounds, etc.¹⁷ In fact, survivors of torture report that their tormentors have included doctors and nurses, some of whom referred to the torture as treatment.¹⁷⁻¹⁸ Both torture and war destroy civilisation in its most

elemental form. It is extremely unfortunate that this annihilation is sometimes witnessed or carried out by healthcare providers for the sake of a nation's objectives.

Human beings existing in a twilight zone of ambiguity, where high-ranking administrative officials consider them as detainees rather than prisoners of war, are a reality. They are not in US territory but on a military base on the island of Cuba, and they are not considered to be tortured because their organs are not failing. What are the ethical implications of this for medical personnel? Do they participate to ease the interrogation process or are they implicating themselves and their profession in one of the worst aspects of state policy during wartime?

Medicine and nursing have not been guiltless in their involvement in shameful events in political and medical history. The medical profession, however, seems more courageous in its quest to understand the ethical breach posed by doctors' participation in such events (capital punishment and torture processes, for instance) than the nursing profession does. Nurses were definitely involved in the administration of death during both the Holocaust and the infamous Tuskegee Syphilis Study (Benedict¹⁹ and Hornblum²⁰), and human rights abuses occurring in psychiatric hospitals in the former Soviet Union were carried out by health personnel. However, in all these cases nurses were shielded by a conspiracy of silence.

Violating ethics: implications of military doctors and nurses

In a letter dated 3 February 2005 and sent to US Secretary of Defense Donald Rumsfeld, the American Nurses Association (ANA) expressed its concerns about the possible involvement of registered nurses in unethical practices at Camp Delta in Guantanamo Bay, Cuba, and in other US detention centres such as Abu Ghraib.

The nursing profession is very concerned about the possible role of registered nurses in the reports of abuse of detainees at US detention and interrogation facilities.²¹

According to the ANA code of ethics for nurses,²² registered nurses must protect and advocate for all patients. The abuse of prisoners, which includes, failure to report known abuse of prisoners, would be in conflict with nursing ethics. In answer to ANA concerns about Abu Ghraib, Chief of the Army Nurse Corps, Major General Gale Pollock, stated that there is no evidence as of yet of "Army Corps members being involved in any unethical behaviors in working with detainees".²³

However, recent investigations (the Fay Report) and other reports contradict this assertion and conclude that some army healthcare professionals failed to report abuses (including a lack of diligent care) of detainees in US detention and interrogation facilities. Furthermore, mounting evidence from many sources, including Pentagon documents, indicates that medical army personnel have collaborated with military interrogators at Guantanamo Bay and that these interrogators are known to have used aggressive counter-resistance measures in a systematic fashion to pressure detainees to cooperate.²⁻⁴ These measures have reportedly included sleep deprivation, prolonged isolation, painful body positions, feigned suffocation and beatings. Other stress-inducing tactics have allegedly included sexual provocation and displays of contempt for Islamic symbols.¹ The International Red Cross (IRC) and other organisations charge that such tactics constitute cruel and inhuman treatment, even torture.⁴ Last summer, the *New York Times*²⁴ reported findings of abuse after an IRC visit to Camp Delta, Guantanamo, Cuba. The IRC report stated that interrogation techniques are designed using health information contained in prisoners' healthcare files. Interrogators tapped clinical data to craft individualised interrogation strategies. In accordance with orders given to military medical staff, health information has been made routinely available to behavioural science consultants and others who are responsible for crafting and carrying out interrogation strategies.⁴

A previously unreported US Southern Command (SouthCom) policy statement, in effect since 6 August 2002, instructs healthcare providers that communications from enemy persons under US control at Guantanamo "are not confidential and are not subject to the assertion of privileges" by detainees. The statement from SouthCom's chief of staff also instructs medical personnel to "convey any information concerning ... the accomplishment of a military or national security mission ... obtained from detainees in the course of treatment to non-medical military or other United States personnel who have an apparent need to know the information". It adds, "Such information shall be communicated to other United States personnel with an apparent need to know, whether the exchange of information with the non-medical person is initiated by the provider or by the non-medical person." The only limit this policy imposes on a caregiver's role in intelligence gathering is that they cannot act as interrogators.

Even more telling is an IRC confidential report²⁵ entitled *Report on the Treatment by*

the Coalition Forces of Prisoners of War and Other Persons in Iraq, which shows a number of serious violations of International Humanitarian Law such as "brutality against protected persons upon capture and initial custody, sometimes causing death or serious injury; physical and psychological coercion during interrogation; prolonged solitary confinement in cells devoid of daylight and finally excessive use of force against people deprived of their liberty resulting in death or injury during their period of internment" (p 3). The report also states that brutality was the usual modus operandi in all detention centres controlled by US military staff. The complicity of army healthcare providers, namely, doctors, nurses and medics, in unethical practices is clear:

The issued International Death Certificate mentioned Cardio-Respiratory Arrest – Asphyxia as the condition directly leading to death. As the cause of that condition, it mentioned "Unknown"... Two other people were hospitalized with severe injuries. A week later an IRC doctor examined them in the hospital and observed large haematomas... consistent with their accounts of beatings received.

All of these findings contradict Pollock's²³ assertion to the ANA that there were no unethical nursing practices in US detention and interrogation centres. Are we to assume that nursing staff were unaware that detainees' files were used by a third party, or that detainees were ill treated during interrogations?

Knowing that people held at Camp Delta are detained illegally, from the standpoint of existing international laws, and not in accordance with the Geneva Convention,²⁶ we question the very presence of licensed healthcare providers (doctors, nurses, psychologists, etc.) on the premises. The IRC²⁵ report clearly allege that healthcare providers are directly or indirectly (eg, by failing to report ill treatment, torture or killing) involved in unethical practices. Extreme settings such as detention and interrogation centres place army healthcare professionals at risk of engaging in unethical practices. This assertion is not at all surprising given that settings such as Guantanamo Camp Delta are run in violation of international laws and permit brutality on a regular basis.

Final remarks

According to the current literature, the explicit or tacit involvement of military healthcare professionals in ill treatment or torture at Camp Delta leaves no room for doubt. The memos and reports of US

officials that play down abuse and torture have proved to be contradictory to the actual practices in detention or interrogation centres. As a consequence, they should always be considered with scepticism. Therefore, we urge international medical and nursing associations to discuss this important issue, particularly in the light of revelations in California that doctors have refused to participate in executions after being ordered to do so by a federal judge, who reasoned that executions without a doctor's supervision leads to pain.²⁷ The California anaesthesiologists who have refused to participate in state-sanctioned death cases provide an opportunity for all medical and healthcare personnel to consider their role in the War on Terror in the same manner, as a violation of their oath to do no harm.

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